

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

THOMAS L. CROFUT AND JUDITH
H. CROFUT, Individuals d/b/a GOOD
FLOW HONEY AND JUICE CO.

Defendants.

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Civil No. A07 CV 996SS

RESPONSE OF THOMAS L. CROFUT AND JUDITH H. CROFUT
d/b/a GOOD FLOW HONEY AND JUICE CO. TO UNITED STATES'
PETITION FOR CONTEMPT

TO THE HONORABLE SAM SPARKS, DISTRICT JUDGE:

Thomas L. Crofut and Judith H. Crofut, d/b/a Good Flow Honey and Juice Co., hereinafter "Respondents" make this response to the United States' Petition for an Order to Show Cause Why Defendants Should Not Be Held in Contempt:

1. Respondents admit the allegations of paragraph 1.
2. In response to paragraphs 2 and 4, Respondents admit that with their consent the Court entered the Consent Decree of record in this matter, and that such decree speaks for itself.
3. In response to paragraphs 3 and 5, Respondents admit that they produced juice after the entry of the Consent Decree, but deny that such conduct was in violation of the terms of the Consent Decree.

Affirmative Defenses

4. Respondents agreed and entered into the Consent Decree with the specific understanding that they would be enjoined from producing juice *unless* they diligently worked to accomplish the requirements of subparagraphs 4. A, 4.B, 4.C. and 4.D., cumulatively. Once those steps were accomplished, and the FDA approved their HACCP Plan, they would be able to continue to produce juice for 120 days while they implemented that plan so that they would then fully comply with federal regulations.

5. Since the entry of the Consent Decree, Respondents have diligently and at great expense pursued the development of the required HACCP Plan. A delay occurred when Dr. A. E. Reynolds, the HACCP expert retained in compliance with paragraph 4.A. of the Consent Decree, advised Respondents soon after his retention that his wife had been diagnosed with ovarian cancer, and he was delayed in developing the Plan by being required to assist his wife in the treatment of her illness, much of which occurred away from his home and office.

6. Despite this delay, Dr. Reynolds has completed development of the required HACCP Plan and submitted it to the FDA for approval. Implementation of this Plan will require Respondents to complete a new production facility at a new production location they have acquired. Under the terms of the Consent Decree, as interpreted by the United States as well as Respondents, Respondents will be permitted to continue production of their juices at the present facility for 120 days while the Plan is implemented.

7. Respondents assert that they have fully complied with the requirements of the Consent Decree.

Even if Respondents Have Misinterpreted the Consent Decree, They Should
Not be Punished for Contempt Under the Circumstances Presented

8. Respondents produce, and have produced since 1978, fresh-squeezed unpasteurized and non-irradiated fruit juices from their facility in east Austin, for sale only in Austin through restaurants and high-grade retailers, as well as to direct customers. They have a dedicated and loyal customer base which demands the freshness and high quality that only they provide in this area.

9. The freshness and high quality their customers require is accomplished by avoiding the necessity of pasteurizing, or cooking, the juices, and achieving healthful juices in other ways. They produce their juices using table-quality fruit certified by their suppliers to be a 8 log (i.e., 10^8) reduction in significant organisms. That fruit is delivered in refrigerated trucks and is maintained by Respondents at 41° from that time until the juice is delivered to customers or, if sold through a grocery store, until purchased by an ultimate user. Respondents' personnel control and monitor the juice through all of this process. Few juice producers in the United States produce juice of this freshness and quality.

10. Prior to January of 2004 the regulations the United States here seeks to enforce (21 CFR, Part 120) were inapplicable to Respondents since they employed at that time twelve (substantially less than 100) full-time employees, and sold less than 100,000 units of juice. (See 21 CFR § 120.1(b)(2)). At that time Respondents had been selling safe, tasty and nutritious juices for over 25 years, and until today have never received a complaint about the quality of their product, or any report of adverse health consequences from consuming their juices.

11. The juices Respondents have produced over those 2 ½ decades may be “adulterated” as that term is used in federal statutes and regulations, since they have not been produced in strict compliance with those regulations, but they are not unsafe or harmful to Respondent’s customers. The United States tacitly accepts that the juices Respondents produce are safe since they agreed in the Consent Decree that once Respondents have developed a HACCP Plan acceptable to the FDA they may continue to produce their juices, just as they have in the past, for the 120 days in which they are permitted to implement their approved plan.

12. Respondents fully accept that they must comply with governmental regulation of their production of juices, and they are in the process of investing large sums of money to move their production facility to a much larger and more modern one. This move is required under the HACCP Plan, and requires a major investment for their very small business. Under these circumstances a substantial fine, or even a substantial award to the government of attorneys’ fees and expenses, may well make it impossible for Respondents to continue to serve their loyal customers, and require them to abandon their business.

13. Accordingly, Respondents respectfully pray that even if the Court determines that they have violated the Consent Decree, which they sincerely believe they have not, that under the circumstances that no substantial monetary penalty be imposed. No harm, or even the potential for harm, has occurred, and Respondents are on track to fully comply with all governmental regulations in the production of their product.

Wherefore, Respondents respectfully request that no further orders be entered in this matter.

Respectfully submitted,

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By: 

John L. Foster
State Bar No. 07289000

CERTIFICATE OF SERVICE

On this 19th day of August, 2008, a true and correct copy of RESPONSE OF THOMAS L. CROFUT AND JUDITY H. CROFUT D/B/A GOOD FLOW HONEY AND JUICE CO. TO UNITED STATES' PETITION FOR CONTEMPT _____ was served upon the following counsel of record:

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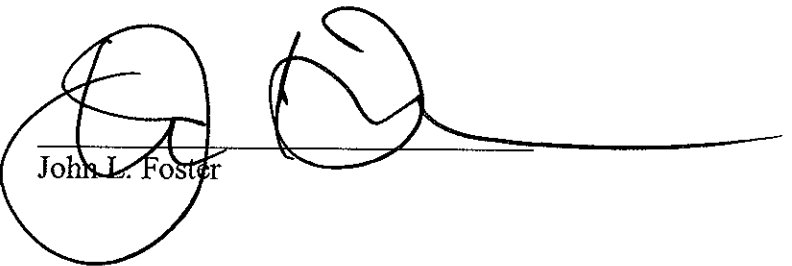
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